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SUNSHINE VALLEY DEVELOPMENTS LTD.

v.

ASSESSOR OF AREA 16 - CHILLIWACK

Supreme Court of British Columbia (A892505) Vancouver Registry

Before the HONOURABLE MR. JUSTICE McCOLL

Vancouver, October 13, 1989

D. W. Low for the appellant
G. Holeksa for the respondent

Reasons for Judgment October 13, 1989

This is an appeal by way of stated case pursuant to Section 74 (2) of the Assessment Act R.S.B.C. 1979, c. 21, which reads:

"(2) A person affected by a decision of the board on appeal, including a municipal corporation on the resolution of its council, the Minister of Finance, the commissioner, or an assessor acting with the consent of the commissioner, may require the board to submit a case for the opinion of the Supreme Court on a question of law only by

(a) delivering to the board, within 21 days after his receipt of the decision, a written request to state a case; and

(b) delivering, within 21 days after his receipt of the decision, to all persons affected by the decision, a written notice of his request to the board to state a case to the Supreme Court."

The Appellant is the owner of 77 lots in a recreational subdivision near Chilliwack, B.C. This appeal challenges the decision of the Assessment Appeal Board made on August 9, 1989 assessing the value of those 77 lots. That decision itself was an appeal from a decision made earlier by the 1989 Court of Revision.

In these proceedings the Appellant attacks the basis upon which the 1989 Court of Revision and the Assessment Appeal Board ("Board") have valued the 77 lots which were the subject of the appeal before those two tribunals.

The subject lots are the remaining unsold 77 lots of 104 lots originally owned by the Appellant in a recreational subdivision complex stratified under the Condominium Act R.S.B.C. 1979, c. 61 near the Municipality of Chilliwack in the Fraser Valley area of British Columbia.

The Board correctly stated the issue before it (at pp. 1 & 2):

"The main issues are whether the actual value of these lots is affected by the difficulty of their absorption into the marketplace and whether value is further affected by a Caveat registered against the title to the property by the Department of Highways.

102 of the lots were subject to the obligations of the owner-developer (Appellant), as required by the Ministry of Transportation and Highways, to provide an approved community sewer system. This was secured by the previously mentioned Caveat.

The Caveat limits the number of lots which may be sold in relation to the capacity of the sewage treatment facilities. After completion of the initial phase of these facilities 18 lots were released from the Caveat; after a second phase of construction a further 17 lots were released for a total of 35 lots. Later this was revised to 50 lots which could be sold. The Caveat does not specify the particular lots which may be sold but merely limits the total number.

Since 1982, when sales of the lots commenced, 27 lots have been sold, including 2 which were not subject to the original Caveat, leaving 77 bare land lots which are the subject of this appeal.

Because 25 lots have been sold, only 25 more of the appealed 77 lots may now be sold prior to any increase in capacity of the community sewer system."

The Appellant lead evidence before the Board that it had been actively marketing the lots for sale since 1982 but was, up to the date of the appeal, experiencing considerable difficulty in selling additional lots because of an apparent lack of demand in the marketplace. It was the Appellant's position that because of the lack of sales it was not economically feasible to complete sewerage facilities to the remaining lots to release the Caveat - a matter it was prepared to do should the market improve.

There were two separate approaches advanced regarding assessing the subject lots. Both approaches are succinctly set out in the decision under appeal (at pp. 3 & 4):

"The Respondent appraiser gave evidence of the sale of 16 various lots in the subdivision from the period April 1985 to the last sale which occurred August 5, 1988 (some of which were resales) using as a base, in his Market Approach, a lot which was sold on August 5, 1988 for $23,600. After adjusting for various lot sizes, topography, and favourable financing provided by the vendor (Appellants) he allowed a time adjustment factor of 1/2 of 1% per month or 6% per year. The Respondent provided no allowance for poor marketability of the lots but allowed a factor of .9 based upon sewering costs of approximately $150,000 still required to be expended to enable the sale of the remaining 52 lots. He stated that, in coming to his conclusions, he was guided by an Appeal Board decision made July 29, 1983 as a result of an appeal of the subject subdivision, in which a deferment factor of 0.564 was used, representing a 10% deferral for 6 years. The Respondent says that deferment factor was at that time based upon approximately $550,000 then required to complete the sewer system, whereas approximately $150,000 only, in his opinion, would now be necessary. He now says a deferment factor of .9 should be used as a result of the lower costs required to complete the sewer system. Allowing for this factor and the adjustments previously mentioned, he arrived at a value for the unsold total of 77 lots of $1,016,350. The Respondent submits that no deferment allowance for delayed marketability of the unsold lots should be permitted.

Mr. Geddes, for the Appellant, submits that the Appellants have made every reasonable effort to market the properties and due to the particular nature of the subdivision, he concludes that an additional 14 years would be required to complete the sale. He says this would warrant a deferment factor of 11% for an average term of 7 years. This factor was used in Stated Case No. 261, Wosk's Ltd. and Whistler Mountain Holdings Ltd. v. Assessor of Area 16 - Chilliwack, a decision of the Supreme Court of British Columbia, July 25, 1988. It is his contention that the lots in the Wosk's case were better located and not encumbered with supervisory control from the Department of Highways. He, therefore, suggested a 12% deferment factor for the subject appeal. He used a comparison of each individual unsold lot which is the subject of this appeal with a most, (in his opinion) comparable sale and adjusted the value for beneficial financing and

work necessary for sewer facilities to put the lots into saleable condition. As a result, he applied a deferment factor of .452 to the effective sale price of similar lots and allowing a further deduction for property taxes arrived at various values."

The Board, having considered both approaches, made its decision in part, in adopting what it considered in the circumstances to be relevant factors from both approaches. It started out by stating, in my view quite accurately, that it was required to determine the "actual value" of each of the lots on an individual basis.

The problem confronting the Board was that it had no way of determining in what order the remaining lots would sell and could not therefore assign a different deferment factor to each different lot (except for the remaining lots which were not then serviced by sewerage lines - lots 85 to 100).

The Board accepted the approach of the Appellant in establishing the present market value of each lot by comparison with similar lots with a known selling price discounted for particular financing arrangements. In doing so however it declined to accept the Appellant's argument that allowances should be made for future taxes or for developers profit and cost of interest during construction. The Board noted that 50 of the 77 lots were presently serviced by sewerage lines and no lots subject to the Caveat were available for immediate sale. It declined to accept the Appellant's contention that cost of constructing the sewerage system should have been deducted from the value of the lots to arrive at a reduced assessment.

Finally the Board directed its attention to what is referred to as a "deferment factor". This concept involves the principle that where an assessment is being made of lands where the absorption rate of comparable land sales is so low that a local comparison is not really possible and where the land in question is unlikely, within a reasonable period of time, to be absorbed into the local market, the assessor is entitled to discount the value of all lots in order to distribute a recognized diminishment of the present value of the land. That principle was recognized by this Court in Re Wosk's Limited and Whistler Mountain Holdings Ltd. v. Assessor of Area 16 - Chilliwack) (July 25, 1988) Reg. No. A873153 (B.C.S.C.) in a decision of Mr. Justice Toy (as he then was). Having considered the argument of counsel for the Appellant on this point the Board held that "this case is not on all fours with that one" (at p. 5). It went on to point out what it felt were the important distinctions in fact between the two; the most important in the mind of the Board being that a sufficient number of lots had sold to make comparables possible in the instant case. It concluded that the subject lots should not be treated differently from any other residential subdivision which is also subject to market peculiarities. The Board did however, in considering the assessment of the lots not serviced by a sewerage system, consider it appropriate to apply a deferment factor holding that they were not saleable until a sewerage system had been installed.

Before the Board the Appellant had argued for a deferment factor of 12% for 7 years. In the Wosk's case the Board had used 11% and in another case in 1983 it had used 10%. Here the Board used a factor of 10% over 7 years.

The Appellant pursuant to the quoted provisions of the Assessment Act required the Board to state a case in the following form:

"THE QUESTIONS on which the Board is requested, by the Appellant, to ask for the opinion of the Supreme Court are:

1. Did the Assessment Appeal Board err in law when it failed to apply the commonly accepted market oriented discounting principle, applied by the British Columbia Supreme Court in Wosk's Ltd. and Whistler Mountain Holdings Ltd. v. Assessor of Area 16 - Chilliwack?

2. In the event Question No. 1 is answered in the affirmative, did the Assessment Appeal Board err in law when it rejected an allowance for the estimated cost of property taxes as an expenditure in the determination of actual value?

3. Did the Assessment Appeal Board err in law by failing to recognize that an allowance should be made for the completion of those sewerage works required under the Caveat?

4. Whether or not Question No. 3 is answered in the affirmative, did the Assessment Appeal Board err in law by rejecting an allowance for interest during construction in respect of the determination of the cost of completing the sewerage works?

5. Whether or not Question No. 3 is answered in the affirmative, did the Assessment Appeal Board err in law by rejecting an allowance for developer's profit in respect of the determination of the cost of completing the sewerage works?

6. Did the Assessment Appeal Board err in law when it rejected an allowance for interest during construction and developer's profit without giving reasons?

7. Did the Assessment Appeal Board err in law when it adopted a deferment factor of ten per cent over seven years in respect of the construction of the collector sewers for lots eighty-five to one hundred, when the only evidence before the Board was that the current rate for deferment of income over that time period as at the date of appraisal was twelve per cent?"

In addition to the above questions stated by the Board two further questions were directed to this Court upon the request of the Respondent. They are:

"8. Did the Assessment Appeal Board err in law when it applied the discounting principle to lots 85 to 100?

9. Did the Assessment Appeal Board err in law in assessing the value of lots with sewerage facilities as not having sewerage facilities?"

In these proceedings the Appellant raises the preliminary argument that the Court has no jurisdiction to answer the two questions added by the Board at the Respondent's request. The facts giving rise to that issue are interesting: The decision under consideration was published on August 9, 1989. Pursuant to Section 74 (2) a party wishing to appeal a decision of the Board has 21 days in which to request, in writing, a stated case to be made. On August 28, 1989 the Appellant made such a request of the Board.

Pursuant to Section 74 (3) the Board then has 21 days in which to state the case. On September 5, 1989 the Board notified both the Appellant and the Respondent of its intention to file a stated case and asked for input from both on proposed facts which it requested to have before it by September 14, 1989. The Respondent did not apparently suggest any changes to the statement of facts but requested instead that the Board add the two questions which are now in issue. On September 18, 1989 the Board filed in the Supreme Court of British Columbia the stated case containing the seven questions submitted by the Appellant and the two submitted by the Respondent.

The Appellant argues that the Respondent's questions not being submitted within 21 days of the receipt of the decision are out of time and that the Court is without jurisdiction to entertain and answer the two questions. Further, it says, as it was not advised of the two questions until after the stated case was filed, it has been denied the opportunity of responding to the Respondent's submissions to the Board.

The Appellant argues that the Respondent, having failed to meet the time limits imposed by Section 74 (2), has attempted to piggyback, so to speak, on its (Appellant's) case. It says that the two questions added to the stated case raise wholly different allegations of errors of law not encompassed in the 7 questions it has required the Board to state; that the Respondent was required to submit those questions to the Board within 21 days of the decision; and that having failed to do so this Court has no jurisdiction to entertain the questions because the Board itself was without authority to submit the two questions to the Court as a stated case.

In my view the preliminary argument fails on both grounds. This Court has held that the failure to observe the procedural requirements of Section 74 are to be treated as a mere irregularity which if not observed will not defeat a stated case: see Genstar Limited v. District of Mission and Assessor of Area 13 - Dewdney-Alouette (1982) 142 D.L.R. (3rd) 760; Stated Case No. 171 November 25, 1982 at 981 (B.C.S.C.); and Canadian National Railway Company v. Assessor of Area 9 - Vancouver (April 26, 1989) Reg. No. A882855 (B.C.S.C.) In the latter case, Lander, J. held (at page 10):

"However, giving s. 74 (2) the fair, large and liberal interpretation favoured by Chief Justice McEachern in Re Genstar (supra), at 983 there is nothing in s. 74 (2) to detract from a party's right to counter-claim or respond to an appellant's timely submission under that provision. Accordingly, the Court has the jurisdiction to hear the questions".

I can see no distinction on the facts to those under consideration by my brother Mr. Justice Lander. Here the Appellant says the questions posed by the Respondent are not by way of a counter-claim but by way of a separate stated case. The issues raised by the two questions posed do not, argues the Appellant, arise out of any reference to the seven questions raised by it.

I do not agree. A counter-claim by its very nature may raise substantially different issues of law. The question is whether or not the issue of law arises out of the same facts. Here it does. The Board has heard evidence relating to the market value of certain parcels of land. It has heard arguments and made certain determinations. The Appellant has attacked certain conclusions of the Board upon the allegations that it has erred in law in reaching those conclusions. The Respondent is powerless to prevent the case from being stated in the form requested by the Appellant. Its only response can be by way of requesting its questions be advanced also by way of stated case as a response to the Appellant's case. A stated case amounts to a claim, not against the other party but against the tribunal itself. If the questions of the Respondent do not technically fall within a counter- claim they do at least fall into the second category of rights referred to by Lander, J.; namely, a response. Here the Respondent's response to the stated case requested by the Appellant was to raise what it considered to be two errors in law on the part of the Board, which questions arise out of the very proceedings and subject matter before that tribunal.

In rejecting this aspect of the Appellant's case I have considered the argument that both the Genstar and the CNR cases are at odds with a recent decision of the Court of Appeal in this Province. In Re Anchor Ventures Inc. v. Assessor of Area 04 - Nanaimo-Cowichan (June 15, 1988) Reg. No. VI 00634 (B.C.C.A.) that Court held that the failure of the Board to file a stated case within 21 days from receiving notice under Section 74 (2), deprived the Court of jurisdiction and the stated case could not be heard.

In the present case, unlike that under consideration in Re Anchor, there is no doubt that the stated case was filed in the Supreme Court within the time limits set out under the Act and was before this Court within those time limits. The jurisdiction of this Court to answer the stated case cannot therefore be doubted. The failure to meet time limits is not in the filing of the stated case nor in the hearing of the matter in this Court within the time limits specified by the statute but rather in the first instance in the failure of the Respondent to request of the Board the issuance of a stated case on its behalf.

If the only questions before this Court were the two submitted by the Respondent the result might be otherwise. But where the two questions in dispute arise by reason of a counter-claim or response to questions submitted by one of the interested parties the other in my view is entitled to the 21 days given to the Appellant under Section 74 (2) in the first instant.

The Appellant further argued that it had not been made aware of the Respondent's questions until the stated case was filed in the Supreme Court by the Board. In the result, it argues, it has been deprived of the right to respond to the Respondent's questions. Had it been given notice of the two questions, it says, it might have reconsidered or amended the questions it originally submitted. There are a number of difficulties with that argument. In the first place it assumes that one interested party has the right to alter or change the nature of the case requested to be stated by another. I find nothing in the statute that would support that proposition. The intent of the Act is to provide a right to any "person affected by a decision of the Board on appeal" to require the Board to submit a stated case. The Board is under a statutory obligation to state the case once an affected party has required it. As the Board is powerless to amend or alter the questions so are any other affected parties responding to the stated case. The only input available to either the Board or other affected parties relates to the statement of facts and in the present case no issue was raised that such a statement might have been affected once the Respondent required the Board to state two further questions.

Further the scheme of the Act contemplates a period of 21 days within which a party may require the Board to state a case. Here the Appellant waited, as it was entitled to do, for 19 days before putting the Board on notice. It would have been impossible in those circumstances for the Respondent to respond within the time limits.

Here the Appellant claims a deprivation of the right to respond to the additional questions and on that basis seeks a direction from the Court that the questions should be struck from the stated case. Even had the Respondent required its questions to be stated within 21 days of the receipt of the decision, the Appellant would not have had the time to respond if the questions had, as in the case of the Appellant, been forwarded to the Board on the 21st day. It is for that reason I assume the legislature imposed directory as opposed to mandatory time limits under Section 74 (2) whereas it imposed mandatory limits upon the Board itself under Sections 74 (3) and 74 (5). I conclude that the statute intended the limits to be strictly adhered to once a case is stated but not necessarily before.

I turn now to the stated case itself. As I have said, the legislation under which this matter comes before this Court is the Assessment Act (supra). It provides for a mechanism to make assessments which are fair and equitable and which fairly represent actual property values. The process is handled through an assessor, Court of Revision and an Assessment Appeal Board. These are all specialized persons or tribunals. The Assessment Appeal Board is the last step in the process of assessment. As a specialized tribunal consisting of persons competent in law or real estate appraisal, appeals from its decisions to this Court are limited to questions of law.

Persons or tribunals charged with the statutory authority to assess actual value are not given carte blanche to make whimsical decisions regarding land values. Their authority is set out in Section 26 of the Act:

"Valuation for purposes of assessment

26. (3) In determining actual value, the assessor may, except where this Act has a different requirement, give consideration to present use, location, original cost, replacement cost, revenue or rental value, market value of land and improvements and comparable land and improvements, economic and functional obsolescence and any other circumstances affecting the value of the land and improvements."

And further under s. 69:

"69. (a) [W]ithout restricting the generality of the foregoing, the board may determine . . .

(e) whether or not the value at which an individual parcel under consideration is assessed bears a fair and just relation to the value at which similar land and improvements are assessed in the municipality or rural area in which it is situated."

There is no doubt that the facts surrounding the assessment of the particular lots of land posed some considerable problems in their assessment as to actual value. It is clear from a reading of the decision under consideration that the Board considered the factual basis upon which the assessment was made. Indeed neither the Appellant nor the Respondent seek to attack the findings of fact made by the it [sic].

In order for the Appellant (or indeed the Respondent with respect to questions 8 and 9) to succeed in this case it must be demonstrated that the Board:

1. misinterpreted or misapplied legislation;

2. misapplied principles of general law, or;

3. acted without evidence.

(See Crown Forest Industries Ltd. v. Assessor of Area 06 - Courtenay (August 8, 1985) Stated Case No. 210 at 1179 (B.C.S.C.).

Having regard to these general principles, I now turn to the questions to be answered.

Question 1: As the Appellant stated, this question goes to the heart of the issue. The Board having heard the argument of the Appellant rejected the deferment factor which this Court held to be an appropriate principle in Wosk's Ltd. supra. In so doing argues the Appellant the Board erred in law. Had the Board rejected the Wosk's case on the basis that it incorrectly stated the law it might be said that an error had been made. Further if the Board said that the principles of the Wosk's case could only be applied where the facts were identical it might be said to have proceeded upon a misapprehension of the law. But that is not what it did. It held that the facts in the Wosk's case were sufficiently dissimilar from the instant case as to not be applicable at all to the lots under consideration. On the facts it was open to the Board to reach that conclusion. Having done so it committed no error when it declined to apply the principle set out in the Wosk's case to the facts before them (indeed when it came to considering the remaining lots - lots 85 to 100 - the Board held upon the facts that those lots would fall within the principles set out in the Wosk's case and assessed them accordingly).

The problem posed for the Board was a factual problem: did the lots in question fall into that group where there was a substantial excess of supply over demand, or were there sufficient local comparables to permit a fair and equitable assessment of the lots based upon local experience? It was open to the Board, on the facts, to conclude one or the other. If it had chosen the former and then rejected the principle in the Wosk's case it might have committed an error in law. As it was it held that as the Appellant had sold a number of the lots pertaining to the original development, the sale of those lots could provide sufficient comparables to assess the remaining lots on the same basis as any other residential subdivision (except with respect to lots 85 to 100).

The Appellant has argued that the number of sales "has no bearing whatsoever on the principle enunciated and approved in the Wosk's decision. All that matters is whether there is a ready

market for the remaining lots that have not been sold." It was, in my view, open to the Board to accept that argument but in rejecting it, it cannot be said to have erred in law. The duty of the Board to consider certain factors is set out under the Act. I cannot say that the Board went beyond those duties or failed to apply the appropriate factors to reach the conclusion it did.

The Appellant further argued that in failing to apply the Wosk's case the Board rejected the principles that emerge from that case. I do not agree. Nowhere can it be said that the principle has been rejected (indeed it was adopted with respect to lots 85 to 100). The Board has merely held, on the facts, that it has no application to the lots under consideration. On the evidence before it, it was entitled to reach that conclusion.

Question 2: In view of the fact that the first question is answered in the negative, this question does not require a response.

Question 3: Here, the Appellant argues, the Board erred when it failed to make an allowance for costs of completion of the sewerage works required under the Caveat.

A reading of the decision indicates that the Board concluded that 50 lots could be sold without any additional costs for the works. In that respect, the Board held, the valuation could be made without consideration to the costs of development in exactly the same way the lots which had already been sold were evaluated. There is no doubt that the Board faced a dilemma here because a number of lots could not be sold without construction of an enlarged sewerage system. The Appellants have argued the cost of construction should be spread over all of the lots under construction. The Board's failure to do so amounts, it says, to an error of law. I am unable to agree with that proposition. It was, I think open to the Board, to reach such a conclusion and thus apply different principles in arriving at a conclusion as to value. I cannot say that in adopting the approach it did, it was in error. I was referred to no authorities which set out the principle of law it was alleged which was breached. The answer to this question is "No".

Questions 4, 5 and 6: The Appellants requested that these questions be considered together. Each question refers to the right to offset value against development costs, profits and interest. The allegation is that the Board did not allow for those deductions, that it ought to have, and that in refusing these deductions the Board did so without providing reasons which it ought to have.

The Respondent argues in fact, upon analysis, that the Board did make allowance for both interest during construction and developers profit. This is not readily apparent in the decision. To understand the Respondent's submission reference must be made to the Appellant's submission to the Board which was an Exhibit (No. 1) to the stated case. There, the Appellant in arriving at the value of the lots, took into consideration both factors (at p. 7):

"Add financing cost 5%	$ 4,221.00
Developers profit 10%	$ 8,442.00
	$12,663.00"

This when added to construction and material costs brought the total additional costs to $97,083.00 which the Appellant applied to the remaining lots at $1,449.00 (rounded to $1,450.00) per lot. This, says the Respondent, was then applied to each lot to reduce the assessment. That may have been the case but I can find no direct support for this assumption in the decision itself. If the Board did in fact make an allowance for these factors it ought to have said so. It said something quite different: "the Board does not agree however with Mr. Geddes' deductions for

future taxes nor developers profit nor interest during construction". The logical inference is, as the Appellant claims, that the Board has not allowed those deductions. If it has not, the Board is in error. It is well settled that the cost of capital (interest) employed during a construction phase is considered a true cost and ought therefore to be taken into account in arriving at "actual value". See In Stated Case 210 - Assessor of Area 06 - Courtenay v. Crown Forest Industries supra; and In Stated Case 214 - Assessor of Area 25 - Northwest v. Ridley Terminal Inc. (January 20, 1986) at 1217 (B.C.S.C.). Whether or not developers profit, as a matter of course ought to be considered, is not so well settled. It is noteworthy that in Canoe Pass Village v. Assessor of Area No. 11 - Richmond-Delta (pronounced November 25, 1986) the Board itself made an allowance for developers profits. In the present case it is not clear from the decision whether or not the Board has disagreed with the Appellant's method of calculating these costs or with the principles of deducting those costs to arrive at the actual value. If it was the former, no error can be said to be made. If it was the latter, the Board erred in reaching that conclusion. The reasons given for the decision seem to support the latter view. The Board was of course not bound to give reasons but in this case its failure to do so gives rise to the conclusion that an error in law is the foundation upon which the decision is reached. The decision is referred back to the Board for a reconsideration on these two issues.

The answer to Question 4 is that the Board erred in law if it rejected in principle an allowance for interest during construction. If the Board did in fact make such an allowance the Appellant is entitled to know how and to what extent such an allowance was made.

The answer to Question 5 is that the Board erred in law if it rejected in principle an allowance for developers profit. If it did make such an allowance the Appellant is entitled to know how the allowance was made and to what extent.

Question 6: This is really a question which reasserts the questions raised in 4 and 5 above with the additional allegation that the Board erred in law in not providing reasons for its failure to allow certain deductions. I have already said that the Board was under no obligation to provide written reasons. The answer to Question insofar as it relates to the requirement to give written reasons is "No".

Question 7: Here the Appellant argues that the Board erred when it allowed a deferment factor of 10% over 7 years (in respect to lots 85 to 100). As the Board itself stated, it had allowed 11% in the Wosk's case and 10% in another instance in 1983. The Appellant argues that no reasonable tribunal could upon the evidence reach a conclusion that 10% was appropriate. It argued that the figure should be 12%. What percentage to allow is a matter which is left entirely to the Board. It was certainly open to it to accept the Appellant's suggestion of 12%. That it did not does not in my view constitute an error of law. The Appellant has a duty to show that the percentage awarded is so unreasonable as to be an abuse of power or was made in an utterly arbitrary manner so as to defeat the rights of the Appellant. In my view 10% is within the realm of reason. The answer to Question 7 is "No".

I now turn to the two disputed questions submitted by the Respondent.

Question 8: Here the Respondent challenges the Board's adoption of the deferment factor (or as he puts it "discounting principle") relative to lots 85 to 100. I have already addressed this issue in my answer to the first question. In my view the Board was faced with a most difficult assessment and applied conflicting principles to a complex assessment and did not err in law in treating lots 85 to 100 in a manner different from other lots under construction. The answer is "No".

Question 9: Here the Respondent argues the Board erred in assessing the value of lots with sewerage facilities and lots not having sewerage facilities. The first hurdle to overcome in my view is to demonstrate that the Board did that which the Respondent says it did. In my view that is

not apparent from a plain reading of the decision. The Respondent argues that the reference arises from a reading of the Board's comments at page 5:

"Mr. Geddes' calculation of the lot values is derived from the actual sales prices of sewered lots which did not consider the cost of development in any way. Deducting the cost of completing the sewer system, as proposed by Mr. Geddes, has no logical foundation."

In my view, the Board is merely stating that, in the calculation of lot values, it is not logical to deduct the cost of completing a sewer system for lots under evaluation when the market comparables consist of lot values derived from actual sales prices of sewered lots. I do not necessarily agree with the proposition but cannot conclude that the Board erred when on the evidence and argument it reached a different conclusion than I might have. I do not find, in this statement, the inference suggested by the Respondent particularly where the Board has accentuated the method as opposed to the principle involved. I find no error on the Board's part in this respect. The answer to Question 9 is "No".

In summary, I conclude that that the answer to Questions 1, 2, 3, 6, 7, 8 and 9 is "No" - the Board did not err in law. As to Questions 4 and 5 I find the matter must be directed back to the Board for reconsideration.

Since there is a mixed result I make no direction as to costs.